

Case 478-G
January 12, 2001

The above-entitled case having come before the Commission on Common Ownership Communities for Montgomery County, Maryland ("the Commission"), pursuant to Sections 10B-5(D), 10B9(a), 10B-10, 10B-11(e), 10B-12, and 10B-13 of the Montgomery County Code, 1994, as amended, and the Commission having considered the testimony and other evidence of record, it is therefore this 12th day of January 2001, found, determined and ordered as follows:

This is a dispute primarily centering on maintenance and upkeep issues on a home and yard in the Neelsville Estates Community Association ("Neelsville Estates"). On September 3, 1999, Neelsville Estates sent notice to Mr. Khademi informing him of "numerous violations" on his property. These include:

- Fence and deck need to be repainted/repared,
- Stumps, fake flowers, birds and other "lawn ornaments" to be removed,
- Shopping cart to be removed from behind fence,
- High grass to be mowed and trimmed,
- Fireplace, appliance and other debris to be removed from backyard,
- Vines to be removed from house,
- Metal play set to be removed from backyard,

- Garage windows to be returned to clear glass,
- Remove colored lights.

The notice gave Mr. Khademi 30 days to bring his property into compliance. When Mr. Khademi failed to remove the violations within the allotted time, the Board scheduled a hearing. After rescheduling and a postponement because of inclement weather, the hearing took place on March 6, 2000. In a letter dated March 6, 2000, Mr. Khademi notified the Board that he would not be able to attend the hearing but indicated that he would bring his property into compliance and that he "started to make arrangements for corrections since this past weekend." The hearing took place without Mr. Khademi. On March 21, 2000, the Board notified Mr. Khademi that if he failed to correct the violations within 30 days a complaint would be filed with the Montgomery County Commission on Common Ownership Communities.

On May 9, 2000, the Board filed the complaint. Mr. Khademi did not file a response to the complaint. The Commission hearing was held on October 25, 2000. Neelsville Estates Community Association presented evidence, including photographs, during the hearing. Mr. Khademi neither attended nor had a representative present his case. He did not refute the case presented by Neelsville Estates.

FINDINGS OF FACT

1. Neelsville Estates Community Association, Inc., complainant, is a community located in Germantown, Maryland. The community is governed by Articles of Incorporation, Bylaws, and a Declaration of Covenants, Conditions and Restrictions, with amendments. The relevant provision of the Declaration that govern this dispute is Article VII which addresses land use including architectural control, maintenance and use restrictions.
2. Rasoul Khademi, respondent, is a homeowner residing at 20301 Foxwood Terrace, Germantown, MD 20876. This residence is located in the Neelsville Estates Community Association.
3. On September 3, 1999, Neelsville Estates notified Mr. Khademi of numerous violations on his property.
4. Neelsville Estates held a hearing on March 6, 2000, to adjudicate the violations. Mr. Khademi did not attend the hearing.

5. In a letter dated March 6, 2000, Mr. Khademi indicated that he would not be attending the hearing. He further indicated that he intended to bring his property into compliance with community standards.

CONCLUSIONS OF LAW

1. The Neelsville Estates Community Association, Inc. Declaration of Covenants, Conditions And Restrictions is a valid and enforceable document. Markey, et al. v. Wolf, et al., 607 A.2d 82, 87 (Md. 1992).
2. A Homeowners Association derives its powers from its Declaration of Covenants, Conditions and Restrictions. Oakhampton Association, Inc. v. Reeve, et al., 637 A.2d 879, 884 (Md. App. 1994) citing Uniformed Planned Community Act (U.L.A. 1980) (prefatory note).
3. Article VII of the Declaration of Covenants, Conditions and Restrictions defines the Association's authority to require homeowners to maintain their houses and yards in a manner acceptable to the community.

DISCUSSION

The evidence presented at the hearing by the Neelsville Estates Community Association clearly demonstrated that Mr. Khademi failed to maintain his house and property to a reasonable standard. Pictures entered into the record show a deck in need of paint and repair, excessive weeds, an unkempt lawn and debris throughout the yard. In addition, one picture showed designs painted on the garage windows. The community's managing agents testified that some of the offensive debris noted in the Board's September 3, 1999 letter had been removed. However, most of the violations remained.

Mr. Khademi did not attend the October 25, 2000 hearing. He did not send a representative to present his position. Therefore, no evidence was entered into the record to refute or challenge the Board's evidence. By ignoring the Commission's summons to appear, Mr. Khademi left the panel no option but to find in the community's favor.


ORDER

In view of the foregoing, and based on the record, for the reasons set forth above, the commission finds:

Under the Declaration of Covenants, Conditions And Restrictions of the Neelsville Estates Community Association, the Association has the authority to require maintenance of a homeowner's house and yard located within the community's boundary. Therefore, the Montgomery County Commission on Common Ownership Communities hereby orders Mr. Khademi, his heirs and assigns, to maintain the house and property at 20301 Foxwood Terrace, Germantown, MD 20876, to the reasonable standards established by Neelsville Estates. This includes, but is not limited to, the painting and repair of the deck and fence; the removal of all paint on the garage windows thereby returning the windows to clear glass; the removal of vines, weeds and all debris (stumps, fake flowers, lawn ornaments, appliances, push lawn mower, etc.) from the exterior of the property; and, maintaining the lawn in an appropriate manner including regular cutting of the grass and removal of weeds. All repairs, except painting, must be completed within 45 days from the date of this Order. All painting must be completed no later than April 15, 2001.

The foregoing was concurred in by panel members Perkins, Krampf and Reilly.

Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court of Montgomery County, Maryland within thirty (30) days from the date of this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.



Stephen M. Reilly, Panel Chairperson
Commission on Common Ownership
Communities